A

DECLARATION

Of The

LIBERTYES

Of The

English Nation,

Principally with respect to

FORESTS.

LONDON,
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ORDINARY

ENGLISH VERBS

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Principally with regard to

FOOTBOTS.

Thesis for the Degree of Doctor in Literature
May in Forty-Four, 1881.

A DECLARATION Of The LIBERTYES Of The English Nation, &c.

Magna Charta, and *Charta de Foreſta*, being both made in the Ninth year of *Henry* the Third, and confirmed in the Eight and twentieth of *Edward* the Firſt, do in effect Treat of the ſame matter, and therefore both are called the great *Charters* of the Liberties of *England*. Which *Charters* were put under the Great Seal, and ſent to Arhbiſhops, Biſhops, and other men of the Clergy, to be ſafely kept, whereof one of them remains at this day with the Archbiſhop of *Canterbury*.

This was a great reach of Policy, to have them well preſerved; and beſides,

The ſame was entred on Record in a Parliament Roll.

And afterwards King *Edward* the Firſt, by Act of Parliament did ordain, that both theſe *Charters* ſhould be ſent, under the Great Seal, as well to the Juſtices of the Foreſt, as to others, and to all Sheriffs, and to all other the Kings Officers, and to all Cities through the Realm; and that the ſame *Charters* ſhould be ſent to all the Cathedral Churches, and that they ſhould be read and publiſhed in every County four times a year in full County, *viz.* the next County day after the Feaſt of St. *Michael*, the next County day after

Chriſtmas, after *Eaſter*, and after the Feaſt of St. *John*.

Magna Charta, and *Charta de Foreſta*, my Lord *Coke* calls two glorious Lights (and truly ſo, for they were adjudged in Parliament to be taken as the Common Law; and the Law is the Light and Guide of Judges.

And albeit Judgments in the Kings Courts are of high regard in Law, and *Judica*, are accounted as *Juris dicta*, yet it is provided by the ſame Act of Parliament, that if any Judgment be given contrary to any of the points of either of the *Charters*, by the Juſtices, or by any other of the Kings Miniſters, *&c.* it ſhall be undone, and holden for nought, becauſe the Judgment is given againſt the Law.

And in ſuch high Eſtimation have theſe two *Charters* been, that they have been confirmed, eſtabliſhed, and commanded to be put in Execution by two and thirty ſeveral Acts of Parliament.

Henry King of *England* ſent greeting to all Archbiſhops, Biſhops, *&c.* who ſhall ſee the *Charter* of Foreſts, that to the Honour of Almighty God, *&c.* they had given, and granted to all Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, and to all Freemen of the Realm of *England*; their Liberties following, to be kept in the Kingdom of *England* for ever.

CHAP. I.

That Woods ſhall be diſafforeſted.

IMprimis we will, that all Forreſts, which King *Henry* our Grandfather afforeſted, ſhall be view'd by good and lawful men; and if he hath afforeſted any other (*a*) Wood, more then his own Demeſne, by which the owner of the Wood hath dammage, it ſhall be forthwith diſafforeſted; and if he hath afforeſted his

his own Wood, then it ſhall remain Foreſt: ſaving the (*b*) Common of Herbage, and of other things in the ſame Foreſt, to them who before were accuſtomed to have the ſame. 3 *Bulſtrode.* 213.

Ockam cap. *quid Regis Foreſta*, ſaith, *Foreſta eſt tuta ferarum Manſio, non quarum libet, ſed ſilveſtrium, non quibuſlibet in locis, ſed certis & ad hoc idoneis, unde Foreſta* E. *mutata in* O. *quaſi Fereſta, hoc eſt, ferarum ſtatio.* Co. Litt. Sect. 378. Fol. 233. *a.*

Foreſts and Chaſes are not incloſed, but a Park muſt be; the Foreſt and Chaſe do differ in Offices and Laws: every Foreſt is a Chaſe, but every Chaſe is not a Foreſt. A Subject may have a Foreſt by ſpecial grant of the King, as the Duke of *Lancaſter*, and Abbot of *Whitby* had. *id. ibid.*

A Foreſt conſiſteth of Eight things, *viz.* Of Soil, Covert, Laws, Courts, Judges, Officers, Game, and certain Bounds. *Co. Inſt.* 4. *Part. Fol.* 289.

Foreſta eſt nomen collectivum, and by the grant thereof, the Soil, Game, and a free Chaſe doth paſs. *id. ibid.*

King *John* the 15 of *June* in the 18 year of his Reign, at *Kummigs-mead*, alias *Kyme-mead*, between *Stanes* and *Windſor*, granted the like Charter, as *Charta de Foreſta* is. *id. ibid.*

(*a*) This is an Act of Reſtitution, for if the King might have made a Foreſt in other Mens Woods, then could not the Owner have fell'd down his own Woods without View and Licenſe, *& ſic ad damnum illius*, &c. *id. Fol.* 300.

(*b*) *Note*, all manner of Commons are ſaved.

CHAP.

CHAP. II.

Who bound to the Summons of the Foreſt.

MEn that dwell out of the Foreſt, from henceforth ſhall not come before the Juſticers of our Foreſt by common Summons, except they be impleaded there, or be Sureties for ſome others that were Attached for the Foreſt.

This Statute of *Charta de Foreſta* hath been above Thirty times, and laſtly in 4 *Hen.* 5. confirmed, and enacted, and commanded to be put in execution. *Co. Inſt.* 4. *Part. Fol.* 303.

And it is very obſervable, that if any Act of Parliament hath been made againſt any of the Articles of the Statute of *Carta de Foreſta*, by the Act of Parliament of 42. E. 3. the ſame is made void, and by the Statute of *Confirmationes Cartarum* in 25. E. 1. all Judgments given againſt any of the points of *Carta de Foreſta*, ſhall be holden for void.

CHAP.

CHAP. III.

What Woods made Foreſt, ſhall be diſafforeſted.

ALL Woods that have been made Foreſt by King *Richard* our Uncle, or by King *John* our Father, untill our firſt Coronation, ſhall be forthwith diſafforeſted, unleſs it be our Demeſne Wood.

Whereas *Henry* 2. *Fitz Empreſs* claim'd that he might make Forreſts not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers ſuch Forreſts within his own and other mens Woods and Grounds: Whereupon ſome Readers, and others that have followed them, are of opinion that *Henry* 2. might *de Jure* do that which he did: This Act of *Charta de Foreſta*, which is but a declaratory Law reſtoring the Subject to his former right, is directly againſt that conceipt, as you may ſee before in the firſt Chapter of it; and to the ſame effect is this third Chapter. Neither could *Henry* 2. or any other King have made, or rais'd a free Chaſe, Park, or Warren for himſelf in any of the grounds of the Subjects; for it is truly ſaid in *Plowdens* Commentaries, Lord *Berkely*'s caſe, *fol.* 236. that the *Common Law hath ſo admeaſured the Kings Prerogatives, that they ſhould not take away, nor prejudice the Inheritance of any.* But we agree, that all the Lands of the Subject are originally derived from the Crown: And therefore when the Ancient Kings had the *Note.*

moſt part in their own hands, or at leaſt great Deſarts, Waſte and Woody grounds, for want of habitation, they might make what Foreſts it pleaſed them therein, which may be a Reaſon and cauſe of a lawfull beginning; and therefore a Foreſt may be by Preſcription good in Law over other mens grounds. But the King in his own grounds may make a Foreſt at this day, which is proved by theſe two Chapters, for ſuch Foreſts are thereby ſaved and Enacted to ſtand. *Co.* 4. *Part. Inſtit.* fol. 300, 301. *Deſertum, id quod ab hominibus deſeritur, & feris relinquitur.*

CHAP. IV.

No Purpreſture, Waſte, or Aſſart to be made in Foreſts.

ALL Archbiſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, and other our Freeholders, who have their Woods in Foreſts, ſhall have their Woods as they had them at the firſt (‖) Coronation of *Henry* our Grandfather, ſo that they ſhall be quit for ever of all (*a*) Purpreſtures, (*b*) Waſtes, and (*c*) Aſſerts, made in thoſe Woods, after that time untill the beginning of the ſecond year of our Coronation: And thoſe who from henceforth do make Purpreſture without our Licence, or Waſte, or Aſſert in the ſame, ſhall anſwer unto us for the ſame Waſtes, Purpreſtures, and Aſſerts.

(*a*) *Pur-*

(a) *Purpreſture* cometh of the French word *purpriſe*, or *pourpris*, which ſignifieth an Incloſure or building, and in legal underſtanding ſignifieth an encroachment on the King, either upon part of the Kings demeſne Lands of his Crown, which are accounted in Law as *res publicæ*, *& ſemper favorabile fuit in Omni Republica Principis patrimonium*; or in the High wayes, or in Common Rivers, or in the Common ſtreets of a City, or generally when any Common Nuſans is done to the King and his people, endeavouring to make that private, which ought to be publick, which *Glanvil*, lib. 9. cap. 11. very aptly deſcribeth in theſe words; *Dicitur autem purpreſtura, vel porpreſtura popriè quando aliquid ſuper Dominum Regem injuſtè occupatur, ut in Dominicis Regis, vel in viis publicis obſtruct', vel in aquis publicis tranſverſis à recto curſu, vel quando aliquis in Civitate ſuper regiam plateam aliquid ædificando occupaverit, & generaliter quoties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis.* Co. 2. Inſtit. *fol.* 272.

It was an Article of the Eyre before the *Statute de Bigamis*, in 4. *Ed.* 1. to enquire *de purpreſturis factis ſuper Dominum Regem, ſive in Terra, ſive in Mari, ſive in aqua dulci, ſive infra libertatem, ſive extra.* Cap. itineris. id. ibid.

It appeareth alſo by *Glanvil*, that there be likewiſe Purpreſtures done to Subjects. *id. ibid.*

(b) Waſte, *Vaſtum dicitur à vaſtando*, of waſting and depopulating; and for that waſte is often alledged to be Timber, which we call in Latine *Maremium*, or *Mareſnium*, or *Mareſmium*; it is good to fetch both of them, ſaith my Lord *Coke*, from the Original. Firſt, Timber is a *Saxon* word: Secondly, *Maremium* is derived of the French word *Marreim*, or *Marrein*, which properly ſignifieth Timber. *Co.* 1. *Inſtit. fol.* 52. *b.* 53.

(c) Aſſert, is ſo called of the effect (as ſome hold) and is derived (ſay they) of *ad* and *ſero*, *aſſero*, becauſe of Wood grounds, Mariſhes or waſte grounds, they are converted to be ſown with Corn, and therefore in the Regiſter, and *F. N. B.* it is written *aſſertare*, with an E. and ſo it is in this Chapter here in the Latin. *Bracton* † hereof ſaith, *Illud quod fuit aliquando boſcus, & locus vaſtæ ſolitudinis & communia & jam inde efficitur Aſſartum, vel redactum eſt in Culturam.* And here-

† Lib. 4. fol. 226.

with agreeth *Fleta*, lib. 4. c. 22. lib. 2. cap. 25. *illud olim fuit Foreſta, et boſcus, &c. et jam efficitur Aſſartum, & reductum eſt in Culturam, et idem dici poterit de Mariſcis et aliis vaſtitatibus in culturam redactis.* Others fetch it otherwiſe, but we hold, that it is derived of the French word *eſſarter*, to grub up, or clear a ground of wood, *&c.* and this appeareth by *Domeſday. Hereford-ſhire. Merchela in eodem manerio ſunt* 58. *acræ terræ provect. de ſilva*, written over the ſame *eſſars*: *de eſſart ſilvæ exeunt* 17. *s.* and 4. *d.* E. being turned into A. *Co. Inſtit.* 4. *part. fol.* 306, 307.

(||) Where it it is ſaid (*tempore Coronationis Regis Henrici Avi*, that is of H. 2.) it is to be known that he was Crowned twice, *viz.* the 20. of *December* in the firſt year; he cauſed his Son *Henry* to be Crowned King the 15. of *June*, in the 16. year of his reign; *Henry* his Son died the 11. of *June* in the 28. year of his reign; after whoſe death King *Henry Fitz-Empreſſe* was Crowned again. *Id. fol.* 293.

CHAP. V.

When Rangers are to make their Range in the Foreſt.

OUr Rangers ſhall go through the Foreſts to make range, as it hath been accuſtomed at the time of the Firſt Coronation of King *Henry* our Grandfather, and not otherwiſe.

The Ranger is a ſworn Officer of the Foreſt, of which ſort there ſeem to be twelve, as you ſhall ſee in the 7. Chapter, but he is not within the Foreſt, having no charge of Vert, but only of Veniſon that cometh out of the Foreſt into his charge, or part

part of the Purlieu, to ſafe conduct them back again. And it is to be noted, that in ſuch Foreſts as have no Purlieus, there is no Ranger, but Foreſters ſerve the turn.

This Ranger is made and appointed by the King, his Letters patents under the great Seal; and for his better encouragement in his duty, he hath a yearly fee of twenty pounds, or thirty pound paid out of the *Exchequer*, and certain fee Dear both red and fallow; his Office conſiſteth chiefly in theſe three points:

1. *Ad perambulandum quotidie per terras de afforeſtatas, ad videndum audiendum & inquirendum, tam de Malefactis, quam de Malefactoribus in Balliva ſua.*

2. *Ad Refugandum feras Foreſtæ tam Veneris quam Chaſeæ de terris deafforeſtatis, in terras afforeſtatas: &*

3. *Ad præſentandum omnes trangreſſiones Foreſtæ in terris deafforeſtatis factas, ad proximas Curias illius foreſtæ tentas.*

As for the Oath of the Ranger, it is continually in theſe words. *You ſhall truly execute the Office of a Ranger in the Purlieu of* P. *upon the border of the Kings Foreſt of* P. *You ſhall rechaſe with your Hound and drive the Wild Beaſts of the Foreſt, as often as they ſhall range out of the ſame Foreſt into the purlieus; You ſhall truly preſent all unlawfull hunting and hunters of Wild Beaſts of Venary and Chaſe as well within the purlieus* (which proveth that the purlieus are no part of the Foreſt, but diſtinct things) *as the Foreſt; and thoſe and all other offences you ſhall preſent at the Kings next Court of Attachments, or* Swanimote, *which ſhall firſt happen: So help You God.* Co. Inſtit. 4 Part. fol. 304.

Purlieu is all that ground near any Foreſt, which being made Foreſt by *Henry* the ſecond, *Richard* the firſt, or King *John*, were by Perambulation granted by *Henry* the third, ſevered again from the ſame. *Manwood*, Part. 2. *of his Foreſt Laws*, cap. 20.

Purlieu, ſaith my Lord *Coke*, containeth ſuch grounds which *Henry* the Second, *Richard* the firſt, or King *John* added to their Ancient Foreſts over other mens grounds, and which were diſafforeſted by force of this Statute, in the firſt and third Chapters, and the Perambulations and Grants thereupon. And is derived from a *French* Adjective, and a *French* Noun, viz. *Pur*, which ſignifieth clear, entire, and exempt, and *lieu*,

that

that is, a place entire, clear, or exempt from the Foreſt. And both of theſe derived from the Latine Adjective and Noun: *viz. Purus locus*, and in this ſence the Civilians called that *purum locum qui ſepulchrorum Religioni non eſt obſtrictus*. And the perambulation whereby the *Purlieu* is deafforeſted, is called in French *Pourallée*. i. e. *perambulatio*: ſo as the *purlieu* and *pourallée* are two diſtinct things, and 33 *E.* 1. *Stat.* 5. *purlieu* is the right name of the place deafforeſted. *Co. Inſtit.* 4. *Part. fol.* 303.

By this it appeareth that Chaſes that never were any Foreſts cannot have any Purlieu, and conſequently the caſe in 16 *Dyer.* 326, *b.* 327. is miſtaken, for the Chaſe of *Whaddon* never was any Foreſt. Whereby it may be obſerved, how neceſſary the true derivation of words is, according to *Littleton's* Example. *id. ibid.*

By this deafforeſtation the owners of the grounds within the Purlieu may at their will and pleaſure fell, cut down, eradicate, and ſtubb up all the Timber, Woods and underwood, convert their Paſtures, Meadowes, and other grounds to arable, incloſe them in with any kind of incloſure, build and erect new Edifices upon the ſame or any part thereof, and to diſpoſe and uſe the ſame after the diſafforeſtation, as if they never had been afforeſted. *id. ibid.*

CHAP. VI.

Lawing of Dogs in Foreſts.

THe Enquiry or view of (*a*) Lawing of Dogs within our Foreſt, ſhall be made from henceforth, when the Range is made, that is to ſay, from three year to three year, and then it ſhall be done by the view and

and testimony of lawful men, and not otherwise. And he whose Dog is not lawed, and so found, shall pay for his amercement three shillings. And from henceforth no Ox shall be taken for lawing of Dogs. And (*b*) such lawing shall be done by the Assise commonly used, that is to say, that three claws of the forefoot shall be cut off by the skin. But from henceforth such lawing of Dogs shall not be, but in places where it hath been accustomed from the time of the first Coronation of the aforesaid King *Henry* our Grandfather.

(*a*) *Expaaltare Canes.* i. e. *Expeditare Canes.* Expeditating or Lawing of Dogs. *Expeditatio* is derived of *ex* and *pede*, because the Dog is lamed in the foot. *Co. Instit.* 4. *Part. fol.* 308.

(*b*) *Canis* in this Chapter is taken for *Mastivus* by these words, *talis Expeditatio fact' per Assisam communiter usitatam*, which hath reference to the Assise of the Forest, *tempore Henri.* 2. Art. 6. which speaketh only *de expeditatione Mastivorum & Assis. & consuetud. Foresta*, 6 Ed. 1. cap. 9. speaketh only *de Mastivo. id. ibid.*

Ortelles, this word is taken from the French word *Orteils des pieds.* i.e. *digiti pedum*, the Toes, or here Claws. *ibid.*

Pellota, of the French word *Pelote*, and they from *Pila*; in this act it is taken for the Ball of the foot, *sine Pelota*, without the ball of the foot. And therefore by the expres's words of this Chapter the ball of the foot of the Mastive is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to Mastiffs, and to no other Dogs; for *Ubi non est Lex ibi non est Transgressio*; and necessary it is, that such as dwell in Forests where there are Coverts, that they should

ſhould keep other Dogs unexpeditated, and the Maſtiff unexpeditated for the defence of their houſe, or for giving of warning of Thieves and Robbers, *&c. ibid.*

The words of this Chapter are, *De expeditatione Canum exiſtentium in Foreſta*; and therefore in Purlieus or places deafforeſted, a man may keep a Maſtiff without being expeditated. *Ibid.*

If Grey-hounds be found running *ad Nocumentum*, the Foreſter ought to retain them, and preſent them in the preſence of the Verderers, and ſend them to the King, or to the chief Juſtice of the Foreſt. *Ibid.*

The Court of Regard, or Survey of Dogs, as you ſee by this chapter, is holden every every third year, for Expeditation or lawing of Dogs by that Court. *Id. fol.* 289.

CHAP.

CHAP. VII.

Where only Gathering ſhall be in Foreſts.

(*a*) NO Foreſter or (*b*) Bedle from henceforth ſhall make (△) Scotal, or gather Garb or Oates, or any Corn, Lamb, or Pig; nor ſhall make any Gathering, but by the Sight, and upon the Oath of the *Twelve Rangers*, when they ſhall make their Range. So many Foreſters ſhall be aſſigned to the Keeping of the Foreſts, as reaſonably ſhall ſeem ſufficient for the Keeping of the ſame.

Stat. 25 *Ed.* 3. 7.

In this Statute of 25 *Ed.* 3. *c.* 7. the words are: *Moreover, It is Accorded and Eſtabliſhed, That no Foreſter, nor Keeper of Foreſt or Chaſe, nor any other Miniſter, ſhall make or gather Suſtenance, nor other Gathering of Victuals, nor other thing, by colour of their Office, againſt any Man's Will, within their Bailywick, nor without; but that which is due of Old Right.*

(a) *Foreſtarius* is taken for a Wood-ward, not only of the *King* within his Foreſt, but *ex vi termini* of any Subject of his Woods whereſoever they lye; as appeareth by a Writ in *Bracton*, *lib.* 4. *fol.* 316. *a. & b. &* 231. *a. Vid. Co. Inſtit.* 4. *part*, *fol.* 293. But in Legal Underſtanding, he is taken for a ſworn Officer Miniſterial of the *King*'s Foreſt; and his Duty appeareth by his Oath, which conſiſteth of Five Parts.

1. That he ſhall be Loyal and True to the Maſter of the Foreſt.

2. That he ſhall truly walk and keep the Office of the Foreſterſhip, and true Watch make both Early and Late, both of *Vert* and *Veniſon*.

3. Truly attach, and true Preſentment make of all manner of Treſpaſſes done within this Foreſt, to his Knowledge; and eſpecially, within the keeping of his Bailywick.

4. The *King*'s Councel, his Fellows, and his own, he ſhall truly keep. And,

5. No Concealment make for no Favour, Meed, or Dread; but well and truly to behave himſelf therein. *Co. ibid.*

Officers of the Foreſt ſhall not be ſworn on Enqueſts out of the Foreſt. *Ordinat. Foreſtæ*, 34 *E.* 1. *cap.* 5. *ibid.*

(b) *Bedellus*, is an Officer of the Foreſt, that doth warn all the Courts of the Foreſt, and doth Execute the Proceſs of the Foreſt, and make all Proclamations as well *within* the Courts, as *without*; and is derived of the *Saxon* Word *Bydder*, to Call or Warn, or of the *French* VVord in *Normandy*, *Bedeau*, a Bayliff, or Apparitor. *Co. Inſtit.* 4 *part*, *fol.* 313.

How many ſorts of Officers, and what Number do belong to a Foreſt, you may be ſatisfied in, by my Lord *Coke*'s Recital of them, as they are found in the Eire of *Pickering*.

The *Foreſters*, by this Chapter, for keeping of the Foreſts, are to be ſo many, as ſhall reaſonably ſeem ſufficient for the ſame.

The *Verderors* are moſt commonly Four in every of the *King*'s Foreſts.

They

They are Judicial Officers of the Forest, and chosen in Full-County, by force of the *King*'s Writ.

The Office of a *Verderer* is to observe and keep the Assizes or Laws of the Forest; and to View, Receive, and Inroll the Attachments and Presentments of all manner of Trespasses of the Forest of *Vert* and *Venison*; and to do equal Right and Justice, as well to Poor as to Rich. All this, and much more you may read in the Oath, which he taketh before the Sheriff. *Co. Instit. 4 par. fol.* 292, 293.

The Form of it you may see in *Manwood*'s First Part of his Forest-Laws, *pag.* 51. *You shall truly serve our Sovereign Lord the* King, *in the Office of a Verderour of the Forest of* P. *You shall to the utmost of your Power and Knowledge, do for the Profit of the* King, *so far as it doth appertain unto you to do. You shall preserve and maintain the Antient Rights and Franchises of his Crown. You shall not conceal from his Majesty any Rights or Priviledges, nor any Offence either in Vert or Venison, or any other thing. You shall not with-draw, nor abridge any Defaults; but shall endeavour your self to manifest, and to Redress the same: And if you cannot do that of your self, you shall give Knowledge thereof unto the* King, *or unto his Justice of the Forest. You shall deal Indifferently with all the* King's *Liege People. You shall Execute the Laws of the Forest, and do equal Right and Justice, as well unto the Poor, as unto the Rich, in that appertaineth unto your Office. You shall not oppress any Person by colour thereof, for any Reward, Favour, or Malice. All these Things you shall, to the uttermost of your Power, observe and keep.*

The *Regardatores*, or Rangers, are by this Chapter to be *Twelve* at the least; but by the said Eire of *Pickering*, it appeareth there may be more, for there are there set down *Thirteen* by name. *Vid. Co. Instit. 4 par. fol.* 311.

The *Agistors*, or *Gist-takers*, are *Four* in Number within every Forest: Their Office you shall see more of in the *Nineth Chapter*. And,

There are several others, which you may see in *Manwood*, *par.* 2. *cap.* 1. *nu.* 4, & 5. together with their Offices, too long here to be inserted.

Δ *Scotales, Scotale,* derived of two *Engliſh* words, *Scot* and *Ale*; as much as to ſay, a Tribute or Contribution of Drinking for the Miniſters of the Foreſt, when they came to the Houſe of any, whereunto others are Contributory within the Perambulation of the Foreſt, which then was called *Potura*, a Drinking. And after, they claimed the ſame for all Victuals for Themſelves, their Servants, Horſes, and Dogs, which was called *Putura:* And this doth notably appear by a Record in 5 *E.* 3. in theſe words:

Putura in Chacea de Bowland. i. *Conſuetudo clamata per Foreſtarios, & aliquando per Ballivos hundredorum, recipere Victualia, tam pro ſeipſis, hominibus, equis & canibus de tenentibus & inhabitantibus infra Perambulationem Foreſtæ ſeu hundredi quando eò pervenerint, nihil inde ſolvend.* And whereas it is enacted by the Statute 25 *E.* 3. *c.* 7. above-mentioned, That no Foreſter, or Keeper of Foreſt or Chaſe, *&c.* ſhall make or gather Suſtenance, *&c.* againſt any Man's Will, *&c.* but that which is due of Old Right; that is, thoſe Fees which time out of mind, they ought to have within that Foreſt, and as ſhall appear to be due by the Oaths of Twelve Regarders, or Rangers. *Co. Inſtit.* 4 *par. fol.* 307.

CHAP.

CHAP. VIII.

When Swanimotes are to be kept, and who to Repair to them.

NO Swanimote from hence-forth shall be kept within this our Realm, but thrice in the Year; *viz.* in the Beginning of Fifteen Dayes afore *Michaelmass*, when that our Gest-takers, or Walkers of our Woods come together, to take Agistment in our Demesne Woods; and about the Feast of Saint *Martin*, in the Winter, when that our Gest-takers shall receive our Pawnage. And to these two Swanimotes, shall come together our Foresters, Verderors, Gest-takers, and none other by Distress. And the Third Swanimote shall be kept in the Beginning of Fifteen Dayes before the Feast of Saint *John Baptist*, when that our Gest-takers do meet to Hunt our *Deer*. And at this Swanimote shall meet our Foresters, Verderors, and none other by Distress. Moreover, every Forty Dayes through the Year, our

our Foreſters and Verderors ſhall meet, to ſee the Attachments of the Foreſt, as well for (△) Greenhue, as for Hunting, by the Preſentment of the ſame Foreſters, and before them Attached. And the ſaid Swanimotes ſhall not be kept, but within the Counties wherein they have uſed to be kept.

Within every Foreſt there are theſe Courts.

1 C. *Firſt*, The *Court of the Attachments*, or the *Wood-mote Court*: This is to be kept before the Verderors every Forty Dayes throughout the Year; and thereupon is called *The Forty-day Court*. At this Court, the Foreſters bring in the Attachments *de Viridi & Venatione*, and the Preſentment thereof; and the Verderors do receive the ſame, and inroll them: But this Court can only Enquire, and not Convict. But it is to be obſerved, that no Man ought to be attached by his Body, for Vert or Veniſon, unleſs he be taken with the Manner within the Foreſt; otherwiſe the Attachment muſt be by his Goods.

2 C. *Secondly*, The *Court of Regard*, or *Survey of Dogs*, to be Holden every Third Year for Expeditation, as before has been ſaid.

3 C. *Thirdly*, The *Court of Swanimote*, which is to be Holden before the Verderors, as Judges, by the Steward of the Swanimote, thrice in the Year; and the Foreſters ought to preſent their Attachments at the next *Swanimote-Court*; and the Freeholders within the Foreſt, are to appear at the Swanimote, to make Enqueſts and Juries. And this Court may enquire *de Superoneratione Foreſtariorum, & aliorum Miniſtrorum Foreſtæ, & de eorum oppreſſionibus populo noſtro illatis.* And this Court may not only Enquire, but Convict alſo; but not give Judgment.

Vid. 1 *E.* 3. *ca.* 8. 50 *E.* 3. *Aſſiz.* 442. *Co. Inſtit.* 4 *par. f.* 289.

Swani-

Swanimote is derived of *Swein*, that is, *Saxonicè*, *Minister*; and *Mote*, or *Gemote*, which is *Curia*, i. e. *Curia Ministrorum Forestæ*; so called, because it is but a Preparative for the Justice-Seat, *a. Ordinat. Forestæ*, 34 *Ed.* 1. *cap.* 4. *id. ibid.*

For the Jurisdiction of this Court, there is a Notable Case in 45 *E.* 3. in a Writ of Trespass of False Imprisonment, brought against *J. de W.* the *Defendant* said, he is Forester in fee of the Forest, and that at a certain Swanimote it was presented by the Foresters, Verderors, Regarders, and Agistors, that the *Plaintiff* had chased and taken Deer within the Forest: Whereupon the *Defendant* being Forester in Fee, came to the *Plaintiff*, and pray'd him to find Pledges to answer the same before the Justice in Eire, in this Country, (that is, at the Justice-Seat:) and that to do the *Plaintiff* refused; by force whereof he retain'd him, until he had performed the Statute in that Case provided; and justifyed the Imprisonment. The *Plaintiff* replyed, *De son tort Demesne sans tiel cause*; and the Issue was received by the Court. And it was said, *That before the Justice in Eire he should have no Averment against the Presentment of the Foresters.* id. f. 290.

Hence are Six Conclusions observable.

First, That the Law of the Forest is allow'd and bounded by the Common-Laws of this Realm. 1.

Secondly, That though the Verderors be Judges of the Swanimote, and the Steward but a Minister; yet the Presentment in that Court, is as well by them as Verderors, as by Foresters, or Keepers, Regarders, and Agistors, by the Law of the Forest. 2.

Thirdly, That a Forester or Keeper may Arrest any Man, that Kills or Chaseth any Deer within the Forest, when he is taken with the Manner within the Forest; or if the Offendor be Indicted. 3.

If a Man be so Imprisoned, and after offer sufficient Pledges, and they are not taken; seeing Justice-Seats for Forests are very seldom Holden, this is his Remedy:

In the Term-time, he may have *Ex merito Justitiæ*, a *Habeas*

beas Corpus out of the *King's-Bench*; or, if he have Priviledge, out of the Court of *Common-Pleas*, or of the *Exchecquer*, or out of the *Chancery*, without any Priviledge in Term, or out of Term in time of Vacation; and upon the Return of the Writ, may be Bailed to appear at the next Eire to be Holden for the Foreſt, *&c.* and alſo, may be Bailed by a Writ *de Homine Replegiando*, directed *Cuſtodi Foreſtæ*, if he be Arreſted by the Officers of the Foreſt, for Hunting, *&c.* whereof he ſtands Indicted, or Preſented, taken with the Manner, he finding Twelve Pledges: But if he be adjudged by the Juſtices in Eire, and Impriſon'd, he can't be Bailed by that Writ.

If he be unjuſtly proceeded againſt, he hath there Remedy by Law.

Note a Difference, between the Writ *de Homine Replegiando* directed to the Sheriff; for he cannot by *Stat. Weſt. 1. cap.* 15. Replevy any Man impriſoned for the Foreſt, being taken with the Manner, or Indicted: But this Statute reaches not to that of *de Homine Replegiando*, directed *Cuſtodi Foreſtæ.*

4. *Fourthly*, That the Offendor may be Retained by him, until he hath found Pledges to appear before the Juſtice in Eire; becauſe (as hath been ſaid) the *Swanimote-Court* hath no Power of Judicature: But if ſufficient Sureties be offered, he ought not to be Impriſoned.

5. *Fifthly*, The Juſtice in Eire at his Seſſions, may, by the Law of the Foreſt, proceed upon the Preſentments or Verdicts in the *Swanimote-Court*, though they are taken in another *Court*. And,

6. *Laſtly*, *Note*, The Iſſue joined upon the Plea of the Foreſter, viz. *De injuria ſua propria abſque tali cauſa*, and allowed by the Court, and the Conſequent thereupon.

Note alſo, That if at the Swanimote, the Preſentment of the Foreſters be found true by the Jury concerning *Vert* or *Veniſon*, the Offendor ſtandeth thereof Convict in Law, and cannot Traverſe the ſame: But an Indictment or Preſentment before the Chief-Juſtice of the Foreſt, at a Court of the Juſtice-Seat by a Jury, and not found in the Swanimote,

21 *E.* 3. 48.

mote, may be Traverſed, 8 *E.* 3. *Itinere Pickering*, 147. *a.* becauſe it is not Preſented but by one Jury. *Co. Inſtit.* 4 *par.* 290, 291.

There is alſo the *Court* of the *Juſtice-Seat*, holden before the Chief Juſtice of the Foreſt, aptly called *Juſtice in Eire*; for ſo he is, and hath Authority and Juriſdiction to Hear and Determine concerning *Vert* and *Veniſon*, &c. by force of Letters Patents under the Great Seal; whereof there are Two: One for the Foreſt on this ſide of *Trent*, the Other beyond. *Id.* 291. 4 C.

The Court of the *Juſtice-Seat* can be kept but every Third Year; and other Juſtices in Eire kept their Courts every Seventh Year. And it muſt be Summoned Forty dayes at leaſt, before the Sitting thereof: And one Writ of Summons is to be directed to the Sheriff of the County. *Id. Ibid.*

There is another Writ of Summons directed *Cuſtodi Foreſtæ*, &c. And this conſiſts of Two Parts.

1. To ſummon all the Officers of the *Foreſt*, to bring with them all Records, *&c.*

2. All Perſons who claim any Liberties or Franchiſes within the *Foreſt*, &c. to ſhew how they claim the ſame. *Id. Ibid.*

More of this ſhall be ſaid in the *Sixteenth Chapter.*

(△) *Greenhue* is *Vert*; and ſignifieth in the Laws of the Foreſt, *Every thing that doth Grow, and bear Green Leaf, within the Foreſt, that may cover and hide a Deer.* Manwood 2 par. *Foreſt-Laws*, fol. 6. a. & fol. 33. b.

Vert is divided into General and Special; *Vert* General is, as above Defined; Special, is every Tree and Buſh within the Foreſt, to Feed the *Deer* withal; as *Pear-Trees*, *Crab-Trees*, *Hauthorns*, *Black-Buſh*, and the like. And the reaſon of this Name is, becauſe the Offence of deſtroying ſuch *Vert*, is *more highly puniſhed than any other, according to the Quantity thereof.* See more *C.* 16.

Menſis Vetitus, Fence-Month, or Defence-Month; ſo called, becauſe it is the Fawning-Month, when the *Does* have Fawnes; for the Preſervation whereof, they ought to be

Fenced, and Defended from Hurt and Diſquiet. It contains a Kalendar-Month of One and Thirty Dayes, and begins the Fifteenth Day before *Mid-Summer*; in the beginning whereof, a *Swanimote* is to be holden, and endeth Fifteen Dayes after: as you may ſee by this *Chapter*. The Third *Swanimote* to be kept in the beginning of Fifteen Dayes *ante Feſtum Sancti* Johannis Baptiſtæ, *quando Agiſtatores noſtri conveniunt pro* * *Faonatione ſeu Feonatione beſtiarum Noſtrarum.* Co. Inſtit. 4 par. fol 313.

In the Printed Book it is *Venatione*, which ought to be amended, and made *Faonatione*, or *Feonatione*; which ſignifieth the *Fawning*.

This word *Faonatio*, or *Feonatio*, is derived of the *French* word *Faonier*, i. e. to Fawn, or for *Does* to bring forth. *Id. ibid.*

CHAP. IX.

Who to take Agiſtment and Pawnage in Foreſts.

EVery Free-Man may Agiſt his own Wood within Our Foreſt, at his Pleaſure, and ſhall take his (□) Pawnage. Alſo, We do grant, That every Free-Man may drive his Swine freely, without Impediment, through our Demeſne Woods, to Agiſt them in their own Woods, or where elſe they will. And if the Swine

of

of any Free-Man lie one Night within our Foreſt, there ſhall be no Occaſion taken thereof, whereby he may loſe any thing of his own.

Agiſtator, ſo called, becauſe he taketh Beaſts to Agiſtment; that is, to Depaſture within the *Foreſt*, or to Feed upon the Pawnage; and cometh of the *French* Word (*Geyſer*,) *i. e.* to Lie; becauſe the Beaſts that Feed there, are there Levant and Couchant, Lying and Riſing. *Co. Inſtit. 4 par. fol.* 293.

Agiſtment is properly the Common of Herbage, of any kind of Ground, or Land, or Woods, or the Money due for the ſame. Mr. *Manwood*, *par. prior.* of his *Foreſt-Laws.*

This Officer is Conſtituted by the *King*'s Letters Patents: And of theſe, in ſuch *Foreſts* where there is any Pawnage, there be *Four* in Number. *Co. ibid.*

There Office conſiſteth in theſe *Four* Points: 1. *In Agiſtando.* 2. *Recipiendo.* 3. *Imbreviando.* 4. *Et Certificando.* ibid.

(□) *Pawnage*, (*Pannagium*, *aliàs Paſnagium*) or *Pennagium*, as it is Latined in *Pupilla Oculi*, may be thought to come of the *French Panez*, or *Panets*; which is a Root muchwhat like to a Parſnip, but leſs and ranker in Taſte; which Hogs do there Feed upon, though it be Eaten by Men alſo. It ſignifieth in our Common-Law, the Money taken by the Agiſtors, for the Feed of Hogs with the Maſt of the *King*'s Foreſt. *Cromp. Juriſd.* fol. 155.

Mr. *Manwood*, *par. prior.* of his *Foreſt-Laws*, ſaith, *Pawnage is moſt properly the Maſt of the Woods, or Lands, or Hedge-Rowes, or the Money due to the Owners of the ſame for it.*

Mr. *Skene de Verbor. Signif.* calleth it *Pannaginm*; and

defineth it to be the Duty given to the *King*, for the Paſturage of Swine in the *Foreſt*.

Quietum eſſe de Pannagio, i. e. to be quit to pay any thing for *Pawnage*. Vid. *F. N. B.* p. 230.

CHAP. X.

The Puniſhment for Killing the King's *Deer.*

NO Man from henceforth ſhall loſe either Life, or Member, for Killing of Our *Deer*: But if any Man be (⊙) Taken, and Convict for Taking of Our *Veniſon*, he ſhall make a Grievous Fine, if he have any thing whereof. And if he have nothing to loſe, he ſhall be Impriſoned a Year, and a Day: And after the Year and the Day is expired, if he can find ſufficient Sureties, he ſhall be Delivered; and if not, he ſhall Abjure the Realm of *England*.

Stat. 1. *Ed.* 3. 8. *Seſſ.* 1.
Stat. 1. *H.* 7. 7.
Regiſter, *fol.* 80.

In this, and in other Chapters of this Statute, *Venatio* ſignifieth *Veniſon*, as in the *Eighth* and *Sixteenth*. It is called

led *Veniſon* of the Mean, whereby the Beaſts are taken, *Quoniam ex Venatione Capiuntur*; and being Hunted, are moſt Wholeſome. They are called, *Beaſts of Venary*, (not *Venery*, as ſome term it) becauſe they are gotten by Hunting.

Ordinatio Foreſtæ, cap. 15. *Co. Inſtit.* 4 par. fol. 316.

There be many Beaſts of the *Foreſt*, by the Laws of the *Foreſts* of *England*.

The *Hart* in *Summer*, the *Hinde* in *Winter*; and all that proceed as of them: The *Buck* in *Summer*, the *Doe* in *Winter*, and the Proceed of them: The *Hare*, Male and Female, and their Proceed: The *Wild-Boar*, Male and Female, and their Proceed: And the *Wolf*, Male and Female, and their Proceed: The *Martin*, Male and Female. The *Roe* is no Beaſt of the *Foreſt*, but it is a Beaſt of *Chaſe*; and ſo it was reſolved by the Juſtices, and the *King*'s Councel, That *Capreoli non ſunt Beſtiæ de Foreſta*: And this was the Reaſon of it, *eò quod fugant alias feras*. Hill. 13 *E.* 3. *coram Rege in Theſaur. Co. Litt.* Sect. 378. fol. 233. *a.*

The Proceeds of the *Hart* and *Hinde*: The Male, the Firſt Year a *Calf*, the Second a *Brocket*, the Third a *Spayad*, the Fourth a *Staggard*, the Fifth a *Stagg*, the Sixth a *Hart*; and ſo after. The Female, the Firſt Year a *Calf*, the Second a *Brocket*'s *Siſter*, and the Third Year a *Hinde*. *Co. Inſtit.* 4 par. fol. 316.

The Proceeds of the *Buck* and *Doe*: The Firſt Year a *Fawn*, the Second Year a *Pricket*, the Third Year a *Sorel*, the Fourth a *Sore*, the Fifth a *Buck* of the Firſt Head, the Sixth a Great *Buck*. *ibid.*

The Proceeds of the *Hare*: The Firſt Year a *Leveret*, the Second Year a *Hare*, the Third a *Great Hare*.

Of a *Wild-Boar*: A *Pigg*, a *Hogg*, a *Hogg-Stear*, a *Boar*, and after a *Sanglier*.

The Seaſons by the Law of the *Foreſt*, for the Beaſts of the *Foreſt*, are theſe:

Of the *Hart*, and the *Buck*, beginneth at the Feaſt of St. *John Baptiſt*, and endeth at Holy Rood-Day.

Of

Of the *Hinde* and *Doe*, beginneth at *Holy-Rood*, and continueth till *Candlemaſs*.

Of the *Fox*, at *Chriſtmaſs*, and continueth till the *Twenty Fifth* of *March*.

Of the *Hare*, at *Michaelmaſs*, and laſteth till *Mid-Summer*.

Of the *Boar*, from *Chriſtmaſs* till *Candlemaſs*. id. ibid.

(⊙) *Taken:* Taken with the *Mayneer*, *à Manu*, is in four kinds; *viz.* *Dog-draw*; that is, Drawing after a *Deer*, which he hath hurt. *Stable-ſtand*; *viz.* At his Standing with any Knife, Gun, or Bow, or cloſe with *Grey-Hounds* in his Leaſh, ready to Shoot or Courſe. *Back-bear*; (*Bracton*, lib. 3. fol. 32.) that is, Carrying away the *Deer*, which he Killed. *Bloody-hand*; *i. e.* When he hath Shot, or Courſed, and is imbrued with Blood. *id. fol.* 294.

If the *King*, or other *Lord* do Pardon a Treſpaſs in a *Foreſt*, and the Offendor at a *Juſtice-Seat*, by his Learned Councel, plead the ſame; in the Proceeding thereupon, we do obſerve Two things: 1. That by the Law of the *Foreſt*, before any Allowance thereof, the Juſtices charge the Miniſters of the *Foreſt*, to enquire, whether the Delinquent hath done any Treſpaſs in *Vert* or *Veniſon*, after the Date of the Pardon. 2. When the Pardon is allowed, then the Entry is, *Quod invenit manucaptores quod à modo non forisfac'. i. non Delinqueret aut peccaret.* But if an Offendor be Convicted for Treſpaſs in the *Foreſt*, in Hunting, *&c.* and adjudged to be Fined or Impriſoned; which Fine, though it be paid, yet ſhall he find Sureties for his good Abearing, *&c.* in theſe words: *Quod à modo ſe bene geret, & in Foreſta prædicta non forisfac'*, i. *non Delinqueret ſeu peccaret. Unde forisfactura pro delicto.* idem, fol. 313.

CHAP.

CHAP. XI.

A Nobleman may Kill a Deer *in a Forest.*

WHatsoever Arch-Bishop, Bishop, Earl, or Baron, coming to Us at Our Commandment, passing by our *Forest*; it shall be Lawful for him to Take and Kill one or two of our *Deer*, by View of our *Forester*, if he be present; or else he shall cause one to blow a Horn for him, that he seem not to Steal Our *Deer*. And they shall do so likewise in their Return from Us, as it is aforesaid.

We find not any Chapter or Article of this *Charta de Foresta*, doth extend to *Chases* or *Parks*, but only this *Eleventh Chapter*. *Quicunq; Archiepiscopus, Episcopus, Comes, vel Baro ad mandatum nostrum transierit per Forestam nostram*, &c. which doth not only extend to the *Forests* of the *King*, but to His *Chases* and *Parks* also: For so was the Law before the Making of this Act, which is but in Affirmance of the Common-Law of the *Forest*, before this Act. *Co. Instit.* 4 par. fol. 308.

First, In respect of the Persons: For, every Lord of *Parliament*, be he Spiritual or Temporal, had this Privilege besides those that be named in this *Chapter*; as, such *Abbots* and *Priors*, as were Lords of *Parliaments*; and so of *Dukes*,

Dukes, *Marqueſſes*, and *Viſcounts*, who were Erected and Created, afterwards being Lords of *Parliament*, have the ſame Privilege alſo. *id. ibid.*

Secondly, By reaſon of the kind of Commandment; *Ad mandatum noſtrum*, ſaith the Statute; which words have reference to the Writ of *Parliament*, directed to every Lord of *Parliament*, *Ideo vobis mandamus*, &c. and is a Legal Commandment by Writ directed ſeverally to each and every Lord of *Parliament*, to appear at the *King*'s Court of *Parliament*, &c. to treat *De arduis & urgentibus negotiis Regni, Statum & Defenſionem Regni & Eccleſiæ* Anglicanæ *concernentibus*. And to Recreate themſelves, *Veniendo*, and after *Redeundo*, they may, paſſing by any of the *King*'s *Foreſts*, *Chaſes*, or *Parks*, Hunt and Kill one or two of the *King*'s *Deer*. The Lords of *Parliament* may do it at other times *ex Gratia*, but by Law, *Eundo & Redeundo*, to and from the *Parliament*.

Thirdly, Here is implyed, that the Lord of *Parliament* may, in the Abſence of the *Foreſter* or *Keeper*, after the Blowing of the Horn, Kill one or two of the *King*'s Deer; *Propriis ſuis Canibus*, *aut Arcu ſuo proprio*.

Fourthly, Here is a ſecret Concluſion of Law, That albeit Spiritual Perſons are Prohibited by the Canon-Law, to Hunt; yet by the Common-Law of the Land, they may for their Recreation, to make them fitter for the Performance of their Duty and Office, uſe the Recreation of *Hunting*, as here it directly appeareth. And in *Aſſiſa Foreſtæ*, 6 *E.* 1. it appeareth, That the *Abbot* of *Peterborow* had a Right of Hunting in the *Foreſt* of *Rockingham*. And this appeareth in other Statutes, *viz.* 13 *R.* 2. 19 *H.* 7. 1 *Jac.* c. 27. And at this Day, and Time out of mind, the *King* hath had after the Deceaſe of every Arch-Biſhop and Biſhop (*inter alia*) *Mutam ſuam Canum*, &c. his Kennel of *Hounds*, or a Compoſition for the ſame; which, and other things, are in the *Exchecquer* called *Multa*.

See 25 H. 8. *cap.* 19, &c.

Fifthly, The laſt Concluſion is, That all Canons againſt the Laws or Cuſtoms of the Realm, are void, and of none effect.

CHAP.

CHAP. XII.

How every Free-Man may use his Land in the Forest.

EVery Free-Man from henceforth, without Danger, shall make in his own Wood, or in his Land, or in his Water, which he hath within Our Forest; Mills, Springs, Pools, Marsh-Pits, Dikes, or Earable Ground, without inclosing that Earable Ground; so that it be not to the Annoyance of any of his Neighbours.

The Jurisdiction of the *Forest* being Local, the Law of the *Forest* hath provided, That the *Forest* should be inclosed by Meets and Bounds, which indeed are the Inclosure of the *Forests*: For, as *Parks* are Inclosed with Wall, Pale, or Hedges; so *Forests* and *Chases* are Inclosed by Meets and Bounds: And as a *Park* cannot be a *Park*, without such an Inclosure indeed; so it can be neither *Forest* nor *Chase*, without an Inclosure in Law; that is, by Meets and Bounds. *Metæ sunt Clausuræ Forestarum & Chacearum.* And where, by the Statute 6 *E.* 1. *c.* 18. it is provided, *Quod omnes metæ Forestæ sint integræ Domino Regi*; that is, so to be understood, *Quoad Jurisdictionem & Imperium, & non quoad*

 Dominium:

Dominium: For if Rivers or High-Wayes be Bounds, (as moſt commonly they be) yet the *King* hath no more Intereſt in the Soil, Way, River, or Fiſhing, than of Right he ought; but only for his Juriſdiction of his *Foreſt*, which extendeth over the whole Way, River, *&c.* And where Mills, and other Houſes, Trees, *&c.* of other Men, and ſuch like, be Meets and Bounds of the *Foreſts*; yet thereby the *King* hath no Intereſt in ſuch Mills, Houſes, or Trees, *&c.* See more of this in *Co. Inſtit.* 4. par. fol. 315. 316.

Here is nothing in this *Chapter* ſo Difficult, as to need Explaining.

CHAP. XIII.

How every Free-Man may uſe his Land in the Foreſt.

EVery Free-Man ſhall have within his own Woods, (*a*) *Ayries* of *Hawkes*, *Sparrow-Hawkes*, *Falcons*, *Eagles*, and *Herons*; and ſhall have alſo the *Honey* that is found within his *Woods*.

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8 E. 3. Itin. Pick. Sir John de Melſa's Caſe.

(*a*) *Aerie* is in our Language, the proper word in *Hawkes*; for That we generally call a *Neſt* in other *Birds*; and ſo uſed here.

The Statute ſpeaketh *De Aëriis Accipitrum, Eſpervorum, Falconum, Aquilarum, & Hieronum*; which is but in Affirmance

mance of the Common-Law; for it extendeth to *Aëries* of other *Hawkes* than be ſpecially named; as to *Aëries Merleonorum in boſcis ſuis de Leveſham.* Co. Inſtit. 4 par. fol. 310.

CHAP. XIV.

Who to take Chiminage or Toll in a Foreſt; *for what Cauſe, and how much.*

NO *Foreſter* from henceforth, who is not *Foreſter* in Fee, paying to Us Ferm for his Bailywick, ſhall take any Chiminage, or Toll within his Bailywick: But a *Foreſter* in Fee, paying Us Ferm for his Bailywick, ſhall take Chiminage; that is to ſay, for Carriage by Cart, the Half-Year *Two Pence*, and for another Half-Year *Two Pence*: for an *Horſe* that beareth Loads, every Half-Year an *Half-Penny*; and by another Half-Year, an *Half-Penny*. And but of thoſe only that come as Merchants through his Bailywick by Licenſe, to buy Buſhes, Timber, Bark, Cole; and to ſell it again at their Pleaſure. But for none other

Carriage by Cart, Chiminage ſhall be taken. Nor Chiminage ſhall not be taken, but in ſuch Places only where it hath been uſed to be. Thoſe who bear upon their Backs Bruſhment, Bark, or Coal to ſell, though it be their Living, ſhall pay no Chiminage to our *Foreſters*, except they take it within our Demeſne-Woods.

Chiminage (as is here expreſſed) ſignifieth a *Toll* for *Wayfarage* through the *Foreſt*. *Crompt. Juriſdic.* fol. 189. *Manwood*, par. 1 of his *Foreſt-Laws*, fol. 86.

Quietum eſſe de Carego, cum aliquâ Cartâ, ſeu Carettâ cartatâ Tranſeuntes per Foreſtam, & ſimiliter ſummagia ſeu ſomagia equorum Conſuet. ſunt ſolvere ſecundum magis vel minus Miniſtris ibidem pro Chemino, ibidem habend. *Summagium*, or *Sommagium*, cometh of the *French* word *Sommier*, or *Summier*; which ſignifieth a *Horſe* carrying any Load. *Chimagium*, is derived from the *French* word *Chemin*, a Way; and, as the Lord *Coke* ſayes, is a *Toll* for Wayfaring-Men through a *Foreſt*. *Co. Inſtit.* 4 par. fol. 306.

CHAP. XV.

Pardon for Out-Laws, of Treſpaſs within the Foreſt.

ALL that be Out-Law'd for the *Foreſt* only, ſince the time of King *Henry* our Grand-

Grand-Father, until our first Coronation, shall come to our Peace without Lett, and shall find to us Sureties, That from henceforth they shall not Trespass unto us, within our *Forest*.

Here you see, though the Out-Laws are Pardoned; yet they are obliged *Invenire Manucaptores quod à modo non forisfac'*, i. *non Delinquerent aut peccarent.*

CHAP. XVI.

How Pleas of the Forest *shall be Holden.*

NO Constable, Castellani, or Bailiff, shall hold Plea of *Forest*, neither for (△) Greenhue, nor Venison, but every *Forester* in Fee shall make Attachments for Pleas of *Forest*, as well for Greenhue, as Venison; and shall present them to the Verderors of the Provinces. And when they be Inrolled and Inclosed under the Seals of the Verderors; they shall be presented to our (*) Chief Justicers of our *Forest*; when they shall come into those Parts, to hold the Pleas of the *Forest*, and before them,

them they ſhall be determined. And theſe Liberties of the *Foreſt*, we have granted to all Men; ſaving to Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barons, Knights, and to other Perſons, as well Spiritual, as Temporal, Templars, Hoſpitallers, their Liberties and free Cuſtomes, as well within the *Foreſt*, as without, and in Warrens, and other places, which they have had. All theſe Liberties and Cuſtomes, We, *&c.* as it is in the End of *MAGNA CHARTA*, and We do confirm and ratify theſe gifts, *&c.* as you may ſee there too is ſpecified, *&c.*

Greenhue, Vert, is whatſoever beareth green Leaf, but eſpecially of green and thick Coverts: And *Vert* is of divers Kinds, ſome that beareth Fruit, that may ſerve as well for Food of Men as of Beaſts, as Pear-Trees, Cheſnut-Trees, Apple-Trees, Service-Trees, Nut-Trees, Crab-Trees, *&c.* and for the ſhelter and defence of the Game: ſome called *Haut-Bois*, ſerving for Food and Browſe of, and for the Game, and for the defence of them, as Oakes, Beeches, *&c.* ſome *Haut-Bois*, for browſe, and ſhelter, and defence only, as Aſhes, Poplers, *&c.* Of *Sub-Bois*, ſome for Browſe and Food of the Game, and for ſhelter, and defence, as *Maples*, &c. ſome for Browſe and defence, as Birch, Sallow, Willow, *&c.* ſome for ſhelter and defence only, as, Alder, Elder, *&c.* Of Buſhes and other Vegetables, Some for Food and Shelter, as the Haw-Thorn, Black-Thorn, *&c.* Some for hiding and ſhelter, as Brakes, Gorſs, Heath, *&c.* To Sum up all, *Plantarum tria ſunt genera: Arbores, Arboreſcentes, & Herba, Arbores,*

Arbores, as *Haut-Bois*, and *Sub-Bois*. *Arboreſcentes*, as Buſhes, Brakes, *&c.* *Herbæ*, as Herbs and Weeds, which, albeit they be Green, yet our legal *Viridis*, Greenhue, extendeth not to them. *Co. Inſtit. 4. par. fol.* 317.

(*) The Court of the Juſtice-Seat hath Juriſdiction to inquire, hear, and determine two things: 1. All Treſpaſſes within the *Foreſt*, according to the Laws of the *Foreſts*. 2. All the Claims of Franchiſes Privileges, and Liberties within the *Foreſt*; as, to have Parks, Warrens, Vivaries, to be quit of Aſſarts and Purpreſtures, to cut down his own Woods, without View of the Foreſter, *&c.* likewiſe Claims of Leets, Hundreds, Felons Goods, Waifs, Strayes, Fugitives, and to kill Hares and other Beaſts of Chaſe within the *Foreſt*; or to have a Wood *Infra Metas Foreſtæ, & extra Regardum Foreſtæ*, that is, to be out of Juriſdiction of the *Foreſt*, and other Franchiſes, Privileges, Liberties, Immunities, Freedomes, *&c.* within the *Foreſt*; whereof excellent Matter is to be Read in the Eire of *Pickering*, in 8. *E.* 3. *Rot.* 3. 1. *Co.* 4. *Inſt. fol.* 291. 21. *H.* 7. 30.

This Chief Juſtice may by the *Stat.* 32. *H.* 8. *c.* 35. make his Deputy, (yet all the Writs of Summons, Antient and Late are *Coram* (the Juſtice *Itinerant*) *Aut ejus Deputato.* Before any Juſtice-Seat be holden, the Regarders of the *Foreſt*, muſt make their Regard by Force of the King's Writ, and the Regard is *Obambulare*, to go through, and view the whole *Foreſt*, and every Bailywick of the ſame, *Ad videndum, inquirendum, imbreviandum & certificandum* all the Treſpaſſes in the *Foreſt*.

His Office extendeth through the whole *Foreſt*, and every Part thereof, to inquire of all offences concerning Vert and Veniſon, and of all Concealments of any Offences or Defaults of the Foreſters, and all other Officers of the King's *Foreſt*. He is a Miniſterial Officer, and is Conſtituted either by Letters-Patents of the King, or by the Chief-Juſtice at the Juſtice-Seat, or to be choſen by Writ to the Sheriff, *id. ibid.*

Before a Juſtice-Seat, there ought to be preparations for the ſame; to the end, that good Service may be done there,

Et

Et quod Itinera non ſint umbratilia. ibid & ſequent.

Kilway. 150. 6. *V.* 21. *H.* 7. 22, & 30. Note, Before *Scroop*, and other Juſtices in *Eire*, according to the Courſe of the Common-Law, a Man Claimed to be quit of Pawnage of the King's *Foreſt*; And alſo he Claimed in the ſame *Foreſt*, Pawnage of his Tenant *Pour Agiſtes*; And for that this belonged to the Juſtices of the *Foreſt*; they would not meddle with it. And the Reaſon of that, is, the Words of the Chapter, *Præſententur Capitalibus Juſticiariis noſtris de Foreſta, cum in partes illas venerint, & coram eis terminentur.* So as the Termination and Ending thereof, belongeth to the Chief Juſtices of the *Foreſt*, by the expreſs Words of this Chapter; and where it ſaith, *Coram Capitalibus Juſticiariis noſtris*, &c. It is to be known, That there is but one Chief Juſtice of the *Foreſts* on this ſide *Trent*, and he is named *Juſticiarius itinerans Foreſtarum*, &c. *citra Trentam.* And there is another *Capitalis Juſticiarius*, and he is *Juſticiarius Itinerans omnium Foreſtarum*, &c. *Ultra Trentam*; who commonly is a Man of greater Dignity, than Knowledge in the Laws of the *Foreſt*. And therefore, when Juſtice-Seats are to be Holden, there be Aſſociated to him ſuch as the King ſhall appoint, who together with him ſhall determine *Omnia placita*, &c. *Foreſte*, with a Patent of *Si non omnes*, and a Writ *de Admittendo*, &c. And the Chief Juſtice of the *Foreſt*, and theſe Aſſociates, are *Capitales Juſticiarii Foreſte*, and named *Capitales* in reſpect of the Verderors and others, that to ſome purpoſes have inferiour Judicial Places.

FINIS.